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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 608 of 1989

with

FIRST APPEAL NOS. 610/89, 611/89, 613/89, 619/89, 624/89,

629/89 and 632/89

with

FIRST APPEAL NOS. 1457/91 TO 1472/91

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

and

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

AHER VELARAM

Appearance:

FIRST APPEAL NOS. 608/99 ETC.:

MR KG SHETH, AGP for Appellants

MR RD DAVE for Respondent No. 2

FIRST APPEAL NOS.1457/91 TO 1472/91 :

MR RD DAVE, for Appellants

CORAM : MR.JUSTICE M.H.KADRI

and

MR.JUSTICE C.K.BUCH

Date of decision: 02/05/2000

COMMON ORAL JUDGEMENT (Per: Kadri, J.)

1. The State of Gujarat has filed First Appeal Nos. 608/89, 610/89, 611/89, 613/89, 619/89, 624/89, 629/89 and 632/89 under Section 54 of the Land Acquisition Act, 1894 (to be referred to as the "Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, against common judgment and award dated 18th February, 1987 rendered by the learned Extra Assistant Judge, Junagadh in Land Reference Cases Nos. 239/83, 240/83, 242/83, 244/83, 250/83, 255/83, 268/83 and 283/83. It may be clarified that First Appeal Nos. 607/89, 609/89, 612/89, 614/89 to 618/89, 620/89 to 623/89, 625/89 to 628/89, 630/89 and 631/89 were summarily dismissed by this Court (Coram : A.P.Ravani & K.J.Vaidya, JJ) on 19th December, 1989.

2. Claimants have filed First Appeal Nos. 1457/91 to 1472/91 claiming enhanced compensation in respect of their acquired lands by challenging the impugned common judgment and award dated 18th February, 1987 rendered by the learned Extra Assistant Judge, Junagadh in Land Reference Cases Nos. 238/83 to 263/83. As common question of facts and law arise for our consideration, we propose to dispose of all these appeals by this common judgment.

3. Executive Engineer, Panchayat & Irrigation Division, Junagadh, by his letter bearing No. IRRI/CV.2296 dated 6th November, 1979 proposed to the Government to acquire lands of village Vekaria for public purpose of constructing Minor Irrigation Scheme on the river Haiyafuti. The said proposal was scrutinized by the Government and notification to acquire lands of the claimants-respondents came to be issued under Section 4(1) of the Act, which came to be published in the

Government Gazette on 25th December, 1980. The land owners filed their objection under Section 5A of the Act against the proposed acquisition. After considering their objections, the Land Acquisition Officer had

forwarded his report to the State Government as contemplated by Section 5A(2) of the Act. On consideration of the said report, the State Government was satisfied that the agricultural lands of village Vekaria which were specified in the notification published under Section 4(1) of the Act were needed for the aforesaid public purpose. Therefore, declaration under Section 6 of the Act was made which was published in the Government Gazette on 16th July, 1980. Corrigendum of declaration was published on 16th October, 1981. Land Acquisition proceedings were numbered as Land Acquisition Case No.1/80 before the Land Acquisition Officer, Junagadh district. Interested persons- owners of the acquired lands were, thereafter, served with notices under sec.9(3)(4) of the Act for determination of compensation. The land owners of the acquired lands claimed compensation of their acquired lands at the rate of Rs. 25,000/ per Vigha for irrigated lands and Rs.15,000/ per vigha for non-irrigated lands. Land owners also claimed compensation for wells, hedge, palas, pipe lines etc. The Land Acq. Officer, on the materials placed before him, made his award on 20th March, 1982 and offered compensation to the claimants at the rate of Rs. 6500/ per Are for barret lands (non-irrigated lands), Rs. 9500/ per Are for irrigated lands and Rs.100/ per Hectare for Kharaba lands. Land Acq. Officer also offered compensation for different kinds of trees standing on the acquired lands.

4. The claimants were of the opinion that the compensation offered by the Land Acquisition Officer was inadequate. Therefore, they submitted applications in writing under Section 18 of the Act requiring the Land Acquisition Officer to refer the applications to the Court for determination of adequate compensation. Accordingly, references were made to the District Court, Junagadh, which were numbered as Land Reference Cases Nos. 238/83 to 263/83. All the land reference cases came to be consolidated and the parties led common evidence in Land Reference Case No. 238/83.

5. Before the Reference Court also, the claimants claimed compensation of their acquired lands of village Vekaria at the rate of Rs.15,000/ per Vigha for barret lands (non-irrigated lands) and Rs. 20,000/ per Vigha for irrigated lands. Claimants contended in their applications that acquired lands were having high fertility and claimants were getting good and substantial income out of the sale of the agricultural produces. It was further contended that claimants had lost their only source of livelihood by acquisition of the acquired lands

and, therefore, they should be suitably compensated for the compulsory acquisition of their acquired lands.

6. State Government filed its written objections in each Land Reference Case, inter alia, contending that the

Land Acq. Officer had awarded just and adequate compensation to the claimants for their acquired lands. It was further contended that the Land Acq. Officer had taken into consideration the situation of the acquired lands, its fertility, type of land and also had taken into consideration sale-deeds which had taken place on the relevant date i.e. date of acquisition. It was further contended that the claimants were not entitled to claim compensation for well, structure and trees as Land Acq. Officer had properly awarded compensation under the above heads. Therefore, the State of Gujarat contended that just and adequate compensation was awarded by the Land Acq. Officer and hence claim applications be dismissed with costs.

7. Reference Court consolidated all the reference cases and parties led common evidence in Land Ref. Case No. 238/83. Reference Court, on the rival assertion of the parties, framed common issues at exh.6 in Land Ref. Case No.238/83 which was treated as a main case.

8. Claimants, to justify their claim, examined (i) Raghav Ram, exh.8, (ii) Abhal Shamantbhai, exh.9, (iii) Nathu Bhoja, exh.10, (iv) Ghusa Laxman, exh.11, (v) Mangalubhai Unadbhai, exh.12 (vi) Jivku Kunjubhai, exh.13 (vii) Madhu Punjbhai, exh.14 (viii) Madhu Kurji, exh.15 (ix) Rajabhai Rambhai, exh.16 (x) Megha Karsan, exh.17 (xi) Vallabh Govind, exh.18 (xii) Deshur Bhima, exh.19 (xiii) Jina Laxman, exh.20 (xiv) Baka Sukha, exh.21 (xv) Mohan Jiva, exh.26 (xvi) Vira Ram, exh.27 (xvii) Mohan

Laxman, exh.28, (xviii) Dana Bhima, exh.29 (xix) Deva Jiva, exh.30, (xx) Madhu Sukha, exh.32, (xxi) Pancha Naran, exh.33 (xxii) Oghad Gosabhai, exh.34, (xxiii) Deshur Bhima, exh.37, (xxiv) Punja Jadav, exh.43 (xxv) Bhura Jivraj, exh.46 (xxvi) Bhikha Mohan, exh.51, (xxvii) Bhagwan Mangalu, exh.52 (xxviii) Vallabh Govind, exh.53, (xxix) Hashmukh Mohanlal Vyas, exh.62. Claimants also produced various documentary evidence such as sale-deeds, certified copies of 7/12 extracts of the acquired lands, reference of which shall be made as and when necessary during the course of this common judgment. On behalf of appellant-original opponent, Nathabhai Ranabhai Dobaria

who was working as a Technical Officer in the Agricultural Department at the relevant time, was examined at exh.70. The said witness produced valuation report with regard to the trees standing on the acquired lands at exh.72. The witness also produced circular issued by the Government of Gujarat dated 10th April,1978 showing the method of valuation of the trees at exh.73. The appellant-opponent also examined Maganbhai Shamjibhai Solanki who was working as Surveyer in Land Acq. Office at the relevant time, at exh.74. Sudhirkumar Hirabhai Dabhi, Deputy Executive Engineer, Panchayat & Irrigation Division, who had carried out valuation of superstructure standing on the acquired lands, at exh.75. The witness produced valuation report prepared by him at exh.78. The witness also produced valuation reports of Bandh Palas and barbed wire fencing (hedge) at exh.79 to 93. Vendee of agricultural lands of survey no.77 of village Vekaria namely Chhagan Vala was examined at exh.94. The witness produced document of sale of survey no.77 at exh.96.

9. Reference Court, on appreciation of oral as well as documentary evidence, was of the opinion that sale-deed exh.51 which reflected the price at the rate of Rs. 681.81 per Are was abnormally of high price and it cannot be considered for the determination of market value of the acquired lands. Reference Court, for the determination of market value of the present acquired lands situated at village Vekaria, relied on the sale-deed produced by the claimants at exh.61 and sale-deed produced by the appellant at exh.96 and took the average price of both the sale-deeds and determined the market value of barret lands (non-irrigated lands) at the rate of Rs. 227/ per Are and Rs.296.87 ps. per Are for irrigated lands, which has given rise of filing of the appeals by the State of Gujarat as well as by the claimants.

10. Learned counsel for the parties have taken us through entire record and proceedings produced in the Reference Court. Counsel for the State Government has vehemently submitted that the method of determination of the market value of the acquired lands by taking average price of the sale-deeds exh.61 & 96, is erroneous in view of the decision in M/s Printers House Pvt. Ltd. v/s Mst. Saiyadan (deceased) by L.Rs., & Ors., reported in AIR 1994 SC 1160. Counsel for the State Government further submitted that sale-deed exh.61 related to the lands of village Kathrota and hence it was not a relevant and comparable sale instance for the determination of the market value of the acquired lands of village Vekaria, whereas sale-deed exh.96 related to the lands of very

same village Vekaria and, therefore, the Reference Court ought to have placed reliance only on the sale-deed exh.96 for the determination of the market value of the acquired lands of village Vekaria. Counsel for the State Government, therefore, submitted that if the sale-deed exh.96 is made the base for the determination of the market value of the present acquired lands, then compensation awarded to the claimants was highly excessive and hence appeals filed by the State Government deserve to be allowed.

11. On the other hand, learned counsel for the claimants submitted that lands of sale-deed exh.96 were not comparable for the determination of the market value of the present acquired lands as the vendee Chhagan Vala, exh.94, in the cross-examination, admitted that the lands bearing survey no.77 which were the subject matter of sale-deed exh.96, were not fertile lands. As they were situated on the bank of the river, they had lost their fertility because of soil erosion due to water of the river. He further admitted that crop which was raised in the said lands, was destroyed by the insects within 15 to 20 days. In the cross-examination, the witness had further admitted that he had purchased lands only for the purpose of raising fodder for his cattle. In para-3 of the cross-examination, the witness Chhagan Vala who was the vendee of the lands of survey no.77, admitted that he had seen acquired lands which were highly fertile and the price of the acquired lands was very high as compared to the lands which were the subject matter of sale-deed exh.96. Counsel for the claimants, therefore, submitted that sale-deed exh.96 was not at all comparable and relevant for the determination of the market value of the acquired lands and the Reference Court ought to have discarded it. Counsel for the claimants further asserted that sale deed exh.61 was executed within the near proximity of the issuance of the notification under sec.4(1) of the Act and the Reference Court ought to have placed reliance on the said sale deed only while determining the market value of the acquired lands because the vendee Bhavan Mavji exh.52 who had proved sale deed exh.61, had categorically deposed that the lands of sale deed exh.61, even though were situated in the adjoining village Kathrota, were inferior in quality compared to the acquired lands of village Vekaria. Counsel for the claimants stressed that sale deed exh.61 was also relied on for the assertion of the market value of the lands which were acquired in the year 1984 of the same village Vekaria and it was considered to be relevant and comparable for the determination of the market value of the lands of village Vekaria. Counsel for the

claimants submitted that lands of sale deed exh.61 reflected price prevailing in the year 1981 of the village Kathrota which was adjoining village, whereas the lands under acquisition were having high fertility than the lands which were the subject matter of sale deed exh.61 and, therefore, claimants were entitled to more compensation than the price of sale deed exh.61. Counsel for the claimants submitted that sale deed exh.61 was made a base for ascertainment of the market value of the acquired lands of the same village Vekaria in other Land Reference Cases and the ascertainment of the market value in other Land Ref. Cases at the rate of Rs. 391/ per Are for non-irrigated lands and Rs. 485/ per Are for irrigated lands, was confirmed by the High Court in First Appeal Nos. 1769/99 to 1773/99 and in First Appeal Nos.1832/99 to 1852/99 . Counsel for the claimants submitted that if sale deed exh.61 was made comparable sale instance for the determination of the market value of the present acquired lands, then the appeals filed by the claimants should be allowed and amount of compensation be enhanced and the appeals filed by the Stte of Gujarat be dismissed with costs.

12. Claimants of all 26 References from which present appeals arise, were examined in the Reference Court. Their evidence is of similar type wherein they had described that the acquired lands were situated on the bank of river Haiyafuti. They claimed that the market price of the acquired lands at the time of acquisition was Rs. 15,000/ per Vigha. Evidence of all the claimants indicates that lands under acquisition were having high fertility and claimants used to raise cash crop of groundnut and they used to raise crop of wheat in winter. They were also raising fruit trees of Guava and mango. Evidence of claimants was not dislodged during their cross-examination. In nutshell, evidence of claimants shows that acquired lands were having fertility and claimants were dependent on the income of sale of agricultural produce raised on the acquired lands. Claimant's witness Bhura Jivraj exh.46 deposed that in the year 1978, he had purchased agricultural lands admeasuring A-2-16 Gunthas of survey no.7 of village Katharota from one Bavbhai Bhanbhai for a consideration of Rs. 21,000/. Witness produced sale-deed of the said lands at exh.48. Sale price of the said sale-deed per Are comes to Rs. 218-75 ps. Witness claimed that agricultural lands of village Vekaria were superior in fertility as compared to the agricultural lands of village Katharota.

13. Witness Bhavan Javji exh.52 deposed that village

Katharota and village Vekaria were adjoining to each other. He stated that he had purchased agricultural lands of village Katharota bearing survey no.86/1 admeasuring about 3 Acres from one Ram Jadav and the sale-deed of the said land was executed on 29th April,1981. He deposed that he purchased above lands at the rate of Rs. 6250/ per Vigha. Sale-deed of above land was produced at exh.61. He admitted that agricultural lands of sale-deed exh.61 were non-irrigated lands. In cross-examination, witness admitted that sale-deed exh.61 was executed after six months of issuance of sec.4 notification. It may be stated that price per Are of the lands which were the subject matter of sale-deed exh.61, comes to Rs. 391.52 ps.

14. On behalf of the opponent viz. Acquiring Body, one Chhagan Vala was examined at exh.94. He deposed that Popat Vala was his brother and his brother had purchased agricultural lands bearing survey no.77 admeasuring about 4 Acres which were non-irrigated lands, from Vala Mulubhai Suranbhhai and he had paid consideration of Rs.10,000/ for the purchase of 4 Acres of agricultural lands of same village Vekaria. Sale-deed was executed on 11.3.1980. Witness produced original sale-deed at exh.96. It is pertinent to note that in the cross-examination, witness deposed that lands under exh.96 were situated on the curvature part of river Haiyafuti and the lands had lost their fertility because of water of the river. He further deposed that during 15 to 20 days of sowing of crop on the lands, due to insects, crop was used to get destroyed. He had stated that he had purchased lands only to grow maize and cattle fodder. He further admitted that agricultural lands of the claimants were having high fertility and price of these lands was very high. Evidence of witness Chhagan Vala shows that agricultural lands of sale-deed exh.96, were only purchased to grow maize and cattle fodder and it was not purchased for producing cash crop of groundnut, wheat or other agricultural produce. In our opinion, sale-deed exh.96 cannot be considered to be comparable to determine market value of the present acquired lands. It may be stated that Land Acq. Officer by his award, had offered market price of the acquired lands at the rate of Rs.65-00 per Are, whereas sale-price of the lands under the sale-deed comes to Rs. 62.50 per Are. This indicates that even Land Acq. Officer had not taken into consideration sale-deed exh.96 at the time of determining market price of the acquired lands. However, learned counsel for the State Government has vehemently submitted that when the sale-deed of the same village was available, Reference Court had erred in placing reliance

on sale-deed exh.61 which was in respect of agricultural lands of adjoining village Katharota. In our opinion, submission of the learned counsel for the Government deserves no merits. When there was no comparable sale-deed available of village Vekaria, Reference Court had committed no error in placing reliance on the sale-deed of village Katharota. Claimants had led sufficient evidence to show that present acquired lands were having more fertility as compared to villages Katharota and Bordi. Claimants had also produced sale-deed exh.45 proved by witness Punja Jadav exh.43 which indicated that in the year 1977, agricultural lands of village Katharota were sold at the price of Rs.375-00 per Are. Similarly, claimants had produced sale-deed exh.48 which was proved by witness Bhura Jivram exh.46 that the agricultural lands of village Katharota were sold in the year 1978 at the price of Rs.218-75 per Are. Sale-deed exh.55 was proved by witness Vallabh Govind exh.53 which shows that in the year 1974, agricultural lands of village Vekaria was sold at the price of Rs.245.50 ps. per Are. Claimants had produced sale-deed exh.51 which was proved by witness Bhikhabhai Mohanbhai exh.49. Agricultural lands of village Bordi were sold by the sale-deed exh.51 for a consideration of Rs.10909-00 on 13.3.1980, price of which per Are comes to Rs.681.81 ps.

15. Reference Court has discarded sale-deeds exh.45, 48 and 55 as they were much prior to the date of issuance of notification under sec.4(1) of the Act. We are in agreement with the Reference Court in discarding above sale-deeds. Reference Court had also discarded sale-deed exh.51 on the ground that it reflected market price at much higher rate and it was a sale of only 1 Acre of lands and seller has paid exorbitant price for the purchase of the said lands of village Bordi and, therefore, it was not a comparable sale-deed to determine market price of the present acquired lands. We do not find any error committed by the Reference Court in not placing reliance on the sale-deed exh.51.

16. Sale-deed exh.61 on which reliance was placed by the Reference Court for determination of the market value of the present acquired lands is comparable sale instance. Though it was of adjoining village Katharota, in our opinion, it reflected prevailing price on the date of notification, though notification issued under sec.4(1) of the Act acquiring present lands was issued on 25th December, 1980 whereas sale-deed exh.61 was executed after four months. Submission of learned counsel for the Government that court cannot take into consideration past

notification sale, does not deserve any merits and requires to be rejected. The Supreme Court, in the case of Mehta Ravindraraaj Ajitrai (deceased by L.Rs.) and others v/s State of Gujarat, Respondent, reported in AIR 1989 SC 2051, has ruled out that "where the sale of land adjacent to acquired land was cited as instance for determination of market value, the same could not be altogether ignored merely because it was a post-acquisition sale when there was no evidence including that there was sharp or speculative rise of the land after acquisition. Of course, some deduction from the price indicated in the sale-deed had to be made for factors such as rise in prices of land after the acquisition."

17. In view of principle laid down by the Supreme Court, in our opinion, as sale deed exh.61 was post notification sale, some deduction will have to be made from the sale price of sale-deed exh.61. Sale-deed exh.61 was dated 29th April, 1981 whereas the present acquired lands in these appeals were acquired by a notification under sec.4(1) of the Act issued on 25th December, 1980. In our opinion, therefore, reasonable deduction of Rs.20/ per Are shall have to be made from the amount of compensation awarded by the Reference Court which will be the market of the present acquired lands as on 25th December, 1980 for non-irrigated lands and which would come to Rs. 370-00 per Are. So far as irrigated lands are concerned, in view of the principle laid down in the decision rendered in Kantaben Manibhai Amin v/s Spl. Land Acq.Officer, Baroda, reported in 1990(1) G.L.H. 74, market value of the irrigated lands would be 25% more which would come to Rs.462-50 ps. per Are which is rounded off to Rs.463.00 ps. per Are.

18. As a result of foregoing discussion, above-numbered first appeals filed by the original claimants are partly allowed. It is held that original claimants shall be entitled to compensation for non-irrigated lands of village Vekaria at the rate of Rs.370-00 per Are instead of Rs.227-00 per Are as determined by the Reference Court. Similarly, the claimants shall be entitled to receive compensation for irrigated lands of village Vekaria at the rate of Rs.463-00 per Are instead of Rs.296-87 per Are as determined by the Reference Court. Claimants shall be entitled to all statutory benefits on the awarded amount under 23(2) and interest under sec.28 of the Act. However, it is clarified that the claimants shall not be entitled to interest on the amount of solatium as per the

settled legal position, as stated in JT 1995(2) SC 583. Impugned common judgment and award of the Reference Court shall be modified to the extent indicated above. There shall be no order as to costs. Office is directed to draw decree accordingly.

18. Learned counsel for the appellants-original claimants has made a grievance that lands belonging to the claimants still they have not been paid additional amount of compensation awarded by the Reference Court. Learned counsel for the claimants further submitted that agriculturists had lost their only source of livelihood as a result of compulsory acquisition and, therefore, State Government should be directed to deposit the awarded amount within reasonable time. Grievance made by the learned counsel for the claimants deserves consideration. We, therefore, direct that the State Government or Acquiring Body shall deposit the awarded amount under this judgment within four months from the date of receipt of the decree.

02.05.2000 [M.H.KADRI, J]

[C.K. BUCH, J]

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